



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF

C-14J

January 10, 2000

Mark A. LaRose
734 N. Wells Street
Chicago, IL 60610

Dear Mr. LaRose,

Thank you for meeting with U.S. EPA representatives on December 16, 1999. At that meeting, you requested that we provide to your client, Cozzi Iron & Metal, Inc. ("Cozzi"), a written discussion of the violations outlined at the meeting, as well as comments on the Site Management Plan you provided to the Agency. This letter and the enclosed attachments are being provided to you in the spirit of settling the claims that have arisen as a result of your client's operations. As you will see, discussion of the alleged violations are broken down by facility and by statute.

We are looking forward to our next meeting, currently set for January 13, 2000, at our offices at 77 W. Jackson Boulevard. At that meeting, we hope to hear from Cozzi regarding its plans to settle our proposed penalty of approximately \$1.5 million and to come into compliance at each of its facilities, and to discuss any issues raised by our comments on the Site Management Plan.

RCRA Issues

Illinois has promulgated standards for the management of used oil and hazardous wastes in Title 35 of the Illinois Administrative Code. Illinois received authorization from U.S. EPA on October 4, 1996 to administer its used oil management program within Illinois; it received authorization from U.S. EPA on January 31, 1986 to administer its hazardous waste management program as well. The Cozzi facilities are subject to the used oil management standards because they generate, process, market and burn "used oil". Cozzi became subject to the hazardous waste regulations at the Paulina facility by storing hazardous waste in a tank.

U.S. EPA personnel have observed and/or otherwise determined (based on record reviews and Cozzi's responses to information requests) that the following used oil and hazardous waste violations have occurred at the specified Cozzi facilities. Additionally, in Attachment A, we

have identified areas of potential ongoing and future violations brought to our attention in the Paulina facility Site Management Plan submitted by Cozzi to the Agency on November 16, 1999.

Cometco Facility

1. 40 C.F.R. §279.12(a); 35 IAC §739.112

The surface impoundment at Cometco is neither a permitted unit, nor one qualifying for interim status. Cometco's storage of used oil in this impoundment is prohibited.

2. 40 C.F.R. §279.71, 40 C.F.R. §279.75; 35 IAC §739.171, 35 IAC §739.175

The surface impoundment at Cometco operates as an oil/water separator and, periodically, oil and/or oily water is skimmed off the top. On at least three occasions, the used oil skimmed off the top was sent to the Paulina facility, put through an oil/water separator there, then burned for energy recovery. Cometco directed several shipments of used oil from its facility to the Paulina facility: because the Cometco and Paulina facilities, at least at the time in question, were separately incorporated, Cometco is a used oil fuel marketer. The used oil regulations presume that unless a facility can demonstrate that its used oil meets the specifications set forth in Section 279.11, the used oil is off-specification used oil. The units in which oil is burned at Paulina are not industrial furnaces (defined in §261.10) or boilers identified in §279.61(a), and, therefore, are unacceptable for burning off-site off-spec used oil. Because Cozzi has not notified Illinois or U.S. EPA of its used oil management activities, Cometco cannot have received a certification from Cozzi stating that it meets the requirements for used oil burners.

Paulina Facility

1. 40 C.F.R. §279.51, 40 C.F.R. §279.53, 40 C.F.R. §279.54, 40 C.F.R. §279.55;
35 IAC §739.151, 35 IAC §739.153, 35 IAC §739.154, 35 IAC §739.155

Cozzi processed the used oil received from the Cometco facility by putting it through an oil/water separator, and processes other used oil generated at the Paulina facility, but has not complied with the used oil processor requirements cited above. Cozzi must obtain an identification number, prepare itself with emergency equipment, develop and implement an analysis plan to determine that the used oil it accepts for processing is not hazardous waste under the presumption of 40 C.F.R. §279.10(b)(1)(ii), manage the used oil in proper tanks or containers with secondary containment, and otherwise comply with the processor requirements set forth in Supart F of Part 279.

2. 40 C.F.R. §279.22

At least twenty-six drums of used oil stored at the facility were unlabeled. Additionally, there were releases of used oil throughout the facility which were unaddressed by Cozzi from at least August 4, 1998 to October 5, 1998.

3. 40 C.F.R. §279.61, 40 C.F.R. §279.63, 40 C.F.R. §279.65, 40 C.F.R. §279.66;
35 IAC §739.161, 35 IAC §739.163, 35 IAC §739.165, 35 IAC §739.166

Because Cozzi accepted off-site, off-spec used oil for burning, Cozzi was subject to the used oil burner requirements. Cozzi has not notified U.S. EPA or Illinois of its used oil activities, and has not otherwise complied with the burner requirements. If Cozzi were to burn only used oil generated on-site in space heaters described in 40 C.F.R. §279.23, Cozzi would not be subject to the used oil burner requirements.

4. 40 C.F.R. §262.34; 35 IAC §722.134

From at least October 5, 1998 until the end of October 1998, Cozzi operated a hazardous waste tank without having a permit or interim status. The hazardous waste tank permitting and management requirements were not satisfied.

SPCC Violations and Plan Deficiencies

Due to Cozzi's storage of oil at facilities located where a discharge of oil into the navigable water of the United States could reasonably be expected, Cozzi Iron & Metal is subject to the Oil Pollution Standards set forth in 40 CFR Part 112. One of the primary requirements of this Part is the submission of Spill Prevention Control and Countermeasures Plans (SPCC Plans) designed to prevent the spillage of oil to surface water bodies, and to contain oil spills when they do occur. Although Cozzi was required to submit an SPCC plan within 6 months after its Paulina facility became operational, and implement that plan within six months following plan submission, an SPCC plan was only first submitted in 1999. On-Scene Coordinator Paul Steadman reviewed the plans submitted on April 29, 1999 for the Paulina and Ewing facilities. For the most part, both plans are deficient in the following respects, based upon the standards set forth in 40 CFR Part 112:

1. Containment which is proposed for tanks and petroleum storage areas is inadequate, particularly for the portable storage tanks identified in Yard 10, and the facility tank truck loading/unloading rack at the Paulina facility. Where tanks are located within a building, and the building itself is proposed as the containment structure, the building must meet the requirements set forth in 40 CFR 112.7. For example, there must be some type of containment or "speed bump" to prevent the discharge of petroleum products from a building through a door or garage door. Also, oil and petroleum products are draining into floor drains, which may discharge to the City of Chicago storm sewers; this is inadequate containment.
2. The plans fail to predict the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of equipment failure. The failure to undertake this analysis, particularly for the hydraulic equipment utilized by Cozzi, could lead to inadequate provisions for containment systems.
3. Failure to adequately discuss preparations for a petroleum spill. The SPCC plans submitted to EPA do not state, in sufficient detail, the personnel, equipment, or materials that will be utilized to respond to or and manage any spill. The plan also does not provide for the training of

response personnel, and response drills/exercises, so that facility personnel are adequately prepared to address a spill.

4. Both plans are unclear as to whether certain physical structures (such as secondary containment) are currently in existence at the facilities, or are merely planned. The SPCC plans do not identify the company's schedule for the construction of needed containment and the necessary facility re-grading discussed in the plans. EPA will not accept an implementation schedule to bring Cozzi into SPCC compliance that is similar to the implementation schedule set forth in the Site Management Plan submitted to the City of Chicago. The Agency would require a much more expedited construction/implementation schedule. Any re-submittal of the SPCC plans must address how and when the plans will be implemented.

Mr. Steadman has prepared a more detailed analysis of the deficiencies identified in the SPCC plans, which will be sent to you this week under separate cover.

Air Violations

Violations of the CFC regulations, which currently have only been identified at the Cometco facility, consist of the following:

1. Cozzi disposed of motor vehicle air conditioners (MVACs) received from the City of Chicago without first recovering the refrigerant from the vehicles or verifying that the refrigerant had been previously evacuated from the vehicles, in violation of 40 C.F.R. § 82.156(f). This disposal of MVACs, causing the release into the environment of a Class I and/or Class II substance used as a refrigerant, is a violation of Section 608 (c)(1) of the Act, and 40 C.F.R. § 82.154(a).
2. Cometco submitted a total of seven incomplete verification statements for the period of May 1 through May 25, 1999 to U.S. EPA, in violation of 40 C.F.R. § 82.156(f)(2). 40 C.F.R. § 82.156(f) requires that persons who take the final step in the disposal process of appliances and MVACs must: A) recover any remaining refrigerant from the appliances or MVAC in accordance with 40 C.F.R. § 82.156(g) or (h); or B) verify that the refrigerant has been evacuated from the appliances or MVAC previously. Such verification must include a signed statement from the person from whom the appliances or MVACs is obtained that all refrigerant that had not leaked previously has been recovered.
3. Persons regulated under § 82.156(f)(3) must notify suppliers of appliances or MVAC that refrigerant must be properly removed before delivery of the items to the facility. The form of this notification may be warning signs, letters to suppliers, or equivalent means.

TSCA Violations

1. At the time of inspection, the California facility failed to provide an annual document log for years 1993, 1994 and 1995. 40 C.F.R. § 761.180(a) requires that a facility owning PCB transformers develop and maintain an annual document log for the management of PCBs or PCB items.
2. At the time of inspection, the California facility did not have the fenced enclosure surrounding three PCB transformers marked. 40 C.F.R. § 761.40(j) requires the fence or means of access to a PCB transformer be marked with the M₁ label.
3. At the time of inspection, the California facility failed to notify the local fire department with the locations of their PCB transforms as required by 40 C.F.R. § 761.30(a)(1)(vi).

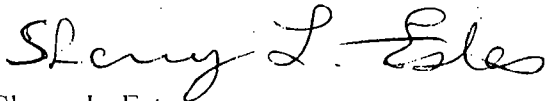
All of these violations have been addressed. However, as with the other identified violations discussed in this letter, U.S. EPA will demand payment of a penalty for the past violations.

Water Violations

1. Several of the Cozzi facilities have stormwater permits, which permit the discharge of stormwater into surface water bodies if certain conditions are met. According to Part G.1 of the storm water permit issued by the Illinois EPA, the facility must submit an annual inspection report to that Agency. This report shall include results of the annual facility inspection, which is required by Part 8 of the Storm Water Pollution Prevention Plan of the permit. No inspection reports were ever prepared nor submitted for any Cozzi facility, which is a violation of the permit and Section 301 of the Clean Water Act.
2. As discussed at our December 16, 1999 meeting, George Opek observed that several large chunks of metal fell off the dock at the Cometco facility. As this discharge would also be a Clean Water Act violation, Cometco must also either construct physical barriers or re-direct its operations to prevent this from occurring again in the future.

At our meeting on January 13, 2000, we would like to discuss with your client an enforceable schedule so that Cozzi may come into compliance with the regulatory requirements discussed in this letter. As previously emphasized, Cozzi Iron and Metal and the enforcement team assigned to this matter must reach an agreement in principle by the end of this month, both on the corrective measures which Cozzi must take to address its violations, as well Cozzi's payment of a substantial penalty, estimated to be in the neighborhood of \$ 1.5 million. The failure to reach such an agreement in principle will result in the U.S. EPA's referral of this matter to the U.S. Department of Justice, for the filing of a judicial enforcement action.

Sincerely,

A handwritten signature in cursive script, reading "Sherry L. Estes".

Sherry L. Estes
Associate Regional Counsel

Attachments:

Comments on Site Management Plan
EPA's Supplemental Environmental Projects (SEP) Policy